

June 16, 1997

In re:

Repeal of Standard 13.0, entitled “Conflicts of Interest,” of “Standards with Comments for Guardian Ad Litem in Missouri Juvenile and Family Court Matters,” and the comment thereto, and in lieu thereof adoption of a new Standard 13.0 and a new comment thereto.

ORDER

1. By order of September 17, 1996, this Court approved certain standards for certain guardians ad litem. Standard No. 13.0 and the comment thereto are repealed and in lieu thereof a new Standard 13.0 and a new comment thereto are approved, to read as follows:

STANDARD 13.0 Conflicts of Interest

If it is determined that the recommendations of the guardian ad litem are not in agreement with the wishes of the child, the court shall be informed by the guardian ad litem.

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COMMENT: There must be no conflict of interest that makes it difficult for the guardian ad litem to present recommendations that are consistent with the child's best interests. At any time during the proceedings in order to avoid a conflict of interest, the guardian ad litem, whether a lawyer or a volunteer, must inform the court of the child's preferences even though different from his or her recommendations.

2. The state courts administrator is directed to provide a copy of this order to each presiding circuit judge and each administrative judge of the family court division.

Day - to - Day

JOHN C. HOLSTEIN
Chief Justice

STANDARDS with COMMENTS
For
GUARDIANS AD LITEM
In
MISSOURI JUVENILE and FAMILY COURT MATTERS

STANDARD 1.0 Appointment of Guardians ad litem

Only a lawyer licensed by the Supreme Court of Missouri and, when authorized by law, a court appointed special advocate volunteer sworn in as an officer of the court shall be appointed to act as a guardian ad litem for a child. The guardian ad litem shall be appointed not later than the first proceeding at which a guardian ad litem is required by law and shall remain involved until the matter in which the guardian ad litem is appointed is concluded or as otherwise ordered by the court.

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COMMENT: Courts may appoint either a lawyer or a court appointed special advocate volunteer to serve as guardian ad litem in accordance with Missouri law in juvenile matters, family court matters, and domestic relations matters, as set forth in chapters 210, 211, 452, 453 and 455, RSMo.

Missouri children deserve quality guardian ad litem representation, whether by a lawyer or a volunteer. To ensure the best possible guardian ad litem services, there needs to be clarity and consistency in defining the role and responsibilities of the guardian ad

litem. To perform his or her duties effectively, the guardian ad litem requires knowledge of the role, understanding of the court's expectations, and knowledge of the criteria used to judge his or her performance.

STANDARD 2.0 Independent Judgment of Guardian ad litem

A guardian ad litem, whether a lawyer or a volunteer, shall be guided by the best interests of the child and shall exercise independent judgment on behalf of the child in all matters.

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COMMENT: Although the parties are interested in the child's well-being, they are not necessarily focused on the best interests of the child. The guardian ad litem, therefore, (1) must recommend only what is in the best interests of the child on each issue, and (2) must maintain an objectivity that preserves a clear focus on the child's best interests.

The roles of a guardian ad litem and a lawyer for the child are different and must be clearly distinguished. A lawyer guardian ad litem is not the lawyer for the child and, therefore, advocates the best interests of the child rather than merely representing the child's preferences.

STANDARD 3.0 Faithful Performance of Duties

The court shall assure that the guardian ad litem maintains independent representation of the best interests of the child. The court shall require the guardian ad litem to perform the guardian ad litem duties faithfully and, upon failure to do so, shall discharge the guardian ad litem and appoint another.

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COMMENT: The guardian ad litem should relate to the child according to the child's stage of development and understand the child's sense of time in relation to his or her age. The guardian ad litem should conduct regular face-to-face meetings with the child, which will allow the guardian ad litem to observe the child's physical, mental, social, educational and familial well-being and to form opinions concerning the underlying cause of any developmental disturbances the child may exhibit. The guardian ad litem shall not diagnose or work therapeutically with the child, but regular, face-to-face contact will ensure informed observations when conferring with other specialists.

STANDARD 4.0 Volunteer Advocates

If the court appoints a court appointed special advocate volunteer, the services of a lawyer shall be obtained by the volunteer program supporting the volunteer when the volunteer has need for legal advice and assistance.

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COMMENT: Volunteers, trained and supervised by court appointed special advocate programs and sworn in as officers of the court, may be appointed to serve as guardians ad litem in certain designated cases. When a volunteer serves as a guardian ad litem, a lawyer must be available to represent and, where appropriate, advise the volunteer.

STANDARD 5.0 Guardian ad litem Access to Child

The guardian ad litem shall not be unduly restricted in access to the child by any agency or person. The guardian ad litem should meet with the child in the child's placement as often as necessary to determine that the child is safe and to ascertain and represent the child's best interests.

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COMMENT: Every child should have a guardian ad litem who is objective and independent and aware of and knowledgeable about the child's particular situation.

STANDARD 6.0 Guardian ad litem Access to Reports and Records

Unless otherwise provided by law, the guardian ad litem shall be provided, upon request, with all reports relevant to the case made to or by any agency or any person and shall have access to all relevant records of such agencies or persons relating to the child or the child's family members or placements of the child.

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COMMENT: Except as otherwise provided by law, the guardian ad litem must have complete access to all information related to the child and the child's situation. See § 210.160.2, RSMo.

STANDARD 7.0 Confidentiality

A guardian ad litem shall observe all statutes, rules and regulations concerning confidentiality. A guardian ad litem shall not disclose information, or participate in the disclosure of information, relating to an appointed case to any person who is not a party to the case, except as necessary to perform the guardian ad litem duties or as may be specifically provided by law.

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COMMENT: The guardian ad litem, whether a lawyer or a volunteer, shall comply with all appropriate codes of ethics and conduct regarding confidentiality.

STANDARD 8.0 The Court Process

The guardian ad litem will review the progress of a child's case through the court process and advocate for timely hearings.

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COMMENT: The harmful effects of prolonged foster care and lack of

permanency planning for children are serious and well documented. Foster Children in the Courts, Edited by Mark Hardin, 1983.

STANDARD 9.0 Relating the Court Process to the Child

The guardian ad litem will explain, when appropriate, the court process and the role of the guardian ad litem to the child. The guardian ad litem will assure that the child is informed of the purpose of each court proceeding. The guardian ad litem will assure the child that the child's opinions and feelings will be made known to the court even when not consistent with the recommendations of the guardian ad litem.

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COMMENT: To decrease the trauma to the child from attending court hearings, depositions and other proceedings, the guardian ad litem shall explain to the child what is happening and what is expected of the child in all proceedings involving the child.

STANDARD 10.0 Participation in Proceedings Outside the Courtroom

The guardian ad litem shall participate in the development and negotiation of any plans, orders and staffings that affect the best interests of the child.

The guardian ad litem shall monitor implementation of service plans and court orders to determine whether services ordered by the court are being provided in a timely manner.

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COMMENT: The guardian ad litem should be present and participate in staffings and meetings that impact the life of the child, including, but not limited to, permanency planning review team meetings and staffings within the educational and mental health settings.

STANDARD 11.0 Participation in Court Proceedings

The guardian ad litem shall appear at all court proceedings to represent the child's best interests. As authorized by law the guardian ad litem may present evidence and ensure that, where appropriate, witnesses are called and examined, including, but not limited to, foster parents and psychiatric, psychological, medical, or other expert witnesses.

In the event any new developments or significant changes in the child's circumstances occur during the pendency of the court process, the guardian ad litem may cause appropriate pleadings to be filed.

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COMMENT: The guardian ad litem should be present at all court proceedings involving the child, which may include depositions and other pre-trial proceedings.

STANDARD 12.0 Protecting the Child as Witness

The guardian ad litem in a pending case shall protect the interests of the child who is a witness in any judicial proceeding related to the case in which the guardian ad litem has been appointed. The guardian ad litem shall explain, when appropriate, the court proceedings and process to the child.

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COMMENT: The guardian ad litem must protect the child from multiple depositions and repetitive examinations that are not in the child's best interests. The guardian ad litem shall request that all parties give notice of any related proceedings or meetings involving the child and for any proposed contact between counsel for a party and a child. In matters for which the guardian ad litem is appointed, the guardian ad litem shall be present during any conferences between counsel for a party and the child.

STANDARD 13.0 Conflicts of Interest

If it is determined that the recommendations of the guardian ad litem are not in agreement with the wishes of the child, the court shall be informed by the guardian ad litem. Whenever the court believes that it is appropriate, the court shall discharge the guardian ad litem and appoint another.

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COMMENT: There must be no conflict of interest that makes it difficult for the

guardian ad litem to present recommendations that are consistent with the child's best interests. At any time during the proceedings in order to avoid a conflict of interest, the guardian ad litem, whether a lawyer or a volunteer, must inform the court of the child's preferences even though different from his or her recommendations. The court has discretion to decide whether the differences between the child's preferences and the guardian ad litem's recommendations create such a conflict of interest that a new guardian ad litem should be appointed.

STANDARD 14.0 Recommendations to the Court

The guardian ad litem shall present recommendations to the court on the basis of the evidence presented and provide reasons in support of these recommendations. When authorized by law, the guardian ad litem may offer evidence to the court. If the guardian ad litem testifies, the guardian ad litem shall be duly sworn as a witness and be subject to cross-examination.

* * *

COMMENT: The guardian ad litem shall ensure the court's receipt of independent, objective information. To make a decision that serves the child's best interests, the court must have knowledge of the child's circumstances from all sources

including the parents, caseworker, and deputy juvenile officer. If the guardian ad litem has information that he or she believes to be relevant from his or her own independent investigation, the guardian ad litem should testify.

STANDARD 15.0 Court Orders

The guardian ad litem should request orders that are clear, specific, and, where appropriate, include a time line for the assessment, services, placement, treatment and evaluation of the child and the child's family.

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COMMENT: All court orders should clearly reflect the requirements and expectations of each party so that stability for the child is achieved as soon as possible.

STANDARD 16.0 Training of Guardian ad litem

No person shall be appointed as guardian ad litem without first completing twelve hours of specialized training. Thereafter, to continue to be appointed as a guardian ad litem, a person shall complete six hours of specialized training annually. Completion of the training hours shall be evidenced by an affidavit filed with the appointing court by July 31 of each year. The court may accept, in lieu of the initial twelve hours of specialized training, an equivalent number of hours of experience as a guardian ad litem prior to the effective date of the adoption of these standards.

The specialized training shall include, but is not limited to, the following topics:

1. Dynamics of child abuse and neglect issues
2. Factors to consider in the determining the best interests of the child, including permanency planning
3. Inter-relationships between family system, legal process and the child welfare system
4. Mediation and negotiation skills
5. Federal, state and local legislation and case law affecting children
6. Cultural and ethnic diversity and gender-specific issues
7. Family and domestic violence issues
8. Available community resources and services
9. Child development issues
10. Guardian ad litem standards.

Programs providing guardian ad litem training to meet the provisions of this standard shall be accredited by the Supreme Court of Missouri's judicial education committee.

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COMMENT: Guardian ad litem practice is unique and complex and, as such, requires special education, training and experience. The guardian ad litem needs an understanding of family dynamics and child development in order to evaluate observed and reported behaviors. The guardian ad litem must interpret lengthy case information, which may include references to stress and abuse syndromes, physical determinations of

abuse, causal factors in abuse and neglect, and the concepts of treatment designed to address abusive behaviors. The guardian ad litem must be able to understand these references and see how determinations of probable cause are developed, how and why treatment programs are prescribed, and how to incorporate these references into his or her recommendations for the best interest of the child.

The guardian ad litem is not expected to make diagnostic or therapeutic recommendations but is expected to provide an information base from which to draw resources. Therefore, the guardian ad litem must have a working knowledge of family dynamics and be able to compare and relate this concept to the observations, reports and documentation received regarding the child and the child's family.